

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

CHRISTOPHER STEVEN HUNT,
Petitioner/Appellant,

and

ISABELLA LIOBA HUNT,
Respondent/Appellee.

No. 2 CA-CV 2016-0075
Filed November 30, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Cochise County
No. DO201100847
The Honorable Karl D. Elledge, Judge

AFFIRMED

Christopher Steven Hunt, Huachuca City
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Judge Staring and Judge Kelly¹ concurred.

ESPINOSA, Judge:

¶1 Christopher Hunt appeals the trial court's decision to allow relocation of his minor children after his former wife, Isabella, moved with them out of the country. Because we find no error in the court's findings, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the trial court's ruling. *Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521, n.1, 169 P.3d 111, 112 n.1 (App. 2007). Christopher and Isabella were divorced in January 2012 by consent decree. The couple agreed to share legal custody² of their four minor children, with Isabella having primary physical custody of the two younger children and Christopher having primary physical custody of the two older children. Both parents lived in the Sierra Vista area and each had parenting time with all of their children. In November 2015, Isabella moved to Germany with the two younger children in order to take care of her ailing father.

¶3 Christopher filed a Motion for Expedited Hearing after learning of Isabella's relocation, asserting she had "failed to follow all procedures for such a move." A month later, he filed a "Verified

¹The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

²Amendments to title 25 of the Arizona Revised Statutes in 2012 replaced the term "legal custody" with "legal decision-making." 2012 Ariz. Sess. Laws, ch. 309, §§ 4, 5.

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Petition for Court Orders Regarding Minor Children and Other Relief in Accordance with A.R.S. [§] 25-411(L),” requesting that “the minor children . . . in Germany be returned[,] . . . he be granted primary physical placement,” and “the original joint legal decision-making arrangement be re-established.”

¶4 At an evidentiary hearing in January 2016, the trial court heard evidence from Christopher, who was represented by counsel; Isabella, who appeared telephonically without representation after her request for foreign counsel had been denied; and two of the couple’s children—now adults. At the conclusion of the hearing the court ordered the parties to submit proposed parenting plans and took the matter under advisement.

¶5 In a written ruling issued in February, the trial court found that Isabella’s move to Germany violated the notice requirements of A.R.S. § 25-408(A), but it nevertheless considered the statutory factors set forth in A.R.S. §§ 25-408(I) and 25-403(A) and concluded it was “in the children’s best interests to remain in Germany and live with their mother as the primary residential parent.” The court also found that Christopher was “entitled to a parenting time schedule that would promote and foster the relationship with the children,” and it set forth a temporary parenting plan that continued Christopher’s telephonic and electronic communication and granted him summer parenting time, with Isabella to “solely bear the expense of transporting the children to and from Arizona.” Finally, the court reaffirmed the previously awarded child support, denied attorney fees and costs to both sides, and signed the ruling in lieu of a formal order pursuant to Rule 81, Ariz. R. Fam. P. The ruling having resolved all issues raised in Christopher’s Verified Petition for Court Orders regarding Minor Children, we have jurisdiction over this appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(2), (4). *Cf. Natale v. Natale*, 234 Ariz. 507, ¶ 9, 323 P.3d 1158, 1161 (App. 2014) (family court ruling which does not resolve all pending issues not appealable absent certification of finality).

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Child Custody

¶6 Christopher first argues he is entitled “to have Joint Custody restored,” or alternatively be awarded “[s]ole legal [c]ustody,” because the reasons offered by the trial court “do[]n’t fit the grounds for the severing of his rights.”³ As an initial matter, we note that Christopher’s parental rights have not been “severed.” See A.R.S. § 8-533. And, although we recognize his ability to see and parent his minor children has been significantly limited given their relocation to Germany, the order appealed from specifically allows him to maintain “[r]easonable telephonic and electronic contact” with them, as well as parenting time in Arizona during the “2016 summer school vacation.”⁴ The court also clarified that Christopher was to have “equal access to prescription medication, documents and other information concerning the children’s education and physical, mental, moral and emotional health,” despite its reaffirmation of Isabella’s “sole legal decision-making” authority over them. By his reference to A.R.S. §§ 25-403 and 25-403.01, Christopher’s argument does not sound in an improper severance of his parental rights, but a misapplication of the appropriate statutory factors.

¶7 Under A.R.S. § 25-408(G), a relocation decision must be made in accordance with the child’s best interests. Subsection (I) of that statute sets forth the relevant factors to be considered, which includes the best-interest factors from § 25-403. In its February 2016

³Isabella has not filed an answering brief or responded to any of Christopher’s allegations in any manner. Although we could construe her failure to respond as an admission of error, we decline to do so here, given that the best interests of minor children are at issue. See *Gonzales v. Gonzales*, 134 Ariz. 437, 437, 657 P.2d 425, 425 (App. 1982) (“Although we may regard th[e] failure to respond as a confession of reversible error, we are not required to do so.”).

⁴ The trial court defined “summer school vacation” as “beginning five days after the end of the school year and [ending] five days prior to the start of the next school year.”

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Order, the trial court addressed each relevant provision in those statutes. *See* §§ 25-408(G), (I), and 25-403(A). In doing so, the court acknowledged that Isabella's relocation to Germany was not in compliance with the procedural rules for such a move, but it found that her relocation was "made in good faith." Thus, despite the procedural violation, the court ruled that the minor children could remain in Germany, noting each parent would still have "frequent, meaningful and continuing contact with the children."

¶8 The trial court addressed each statutory factor, as required, finding that each either weighed in favor of relocation, was "neutral," or had "little or no relevancy to the facts of this case." *See Murray v. Murray*, 239 Ariz. 174, ¶ 9, 367 P.3d 78, 81 (App. 2016) (factual findings required where relocation involves substantial change in physical custody). Because the appropriate statutory factors were considered, and because Christopher has failed to provide a transcript of the proceedings, we presume the court's decision was supported by the record, and we find no reason to disturb its ruling. *See Rancho Pescado, Inc. v. Nw. Mut. Life Ins. Co.*, 140 Ariz. 174, 189, 680 P.2d 1235, 1250 (App. 1984) (appellant has duty to provide all necessary transcripts on appeal); *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) (when hearing transcript not provided on appeal, we presume trial court findings supported by the record).

¶9 Christopher additionally cites § 25-403.01, which provides the statutory factors to be considered when a legal decision-making determination is made. But the trial court did not make such a determination, ruling only that "[t]he previous order of the [c]ourt awarding the mother sole legal decision-making authority shall remain in effect." Accordingly, the trial court was not required to consider statutory factors not at issue, and Christopher's reliance on § 25-403.01 is misplaced.

¶10 Finally, Christopher argues his fundamental right to control the upbringing of his children was violated by a lack of due process. Christopher has waived this issue, however, by not raising it with the trial court, *see Harris v. Cochise Health Sys.*, 215 Ariz. 344, ¶ 17, 160 P.3d 223, 228 (App. 2007), and by failing to meaningfully

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develop the argument on appeal, *see State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004). And in any event, although Christopher is correct that the right to control the upbringing of one's child is a fundamental right protected by the Due Process Clause of the United States Constitution, *see Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923), we see no due process violation in this case. At an eight-hour evidentiary hearing where he was represented by counsel, Christopher presented exhibits and witnesses, testified on his own behalf, and cross-examined Isabella. It therefore cannot reasonably be said he was denied due process. *See Murray*, 239 Ariz. 174, ¶ 18, 367 P.3d at 83 (when child's best interest in dispute, "the court must allow the parties to present evidence before it makes its finding"); *see also Volk v. Brame*, 235 Ariz. 462, ¶¶ 14, 24, 333 P.3d 789, 793, 796 (App. 2014) (due process requires reasonable opportunity to present testimony and cross-examine witnesses). Accordingly, we find no error in the trial court's best-interest and relocation findings.

Violation of the Notice Requirement

¶11 Christopher next asserts that Isabella should be required to "return the Children back to their family/friends in Arizona[] for violating the Notice Requirement." But he provides no citation of law or other support for this argument, and he has therefore forfeited the issue on appeal. Under the Arizona Rules of Civil Appellate Procedure, an appellant's opening brief must contain "supporting reasons for each contention," with "citations of legal authorities and appropriate references to the portions of the record on which the appellant relies." ARCAP (13)(a)(7)(A). Each argument must additionally contain "the applicable standard of appellate review with citation to supporting legal authority." ARCAP (13)(a)(7)(B). *See Moody*, 208 Ariz. 424, n.9, 94 P.3d at 1147 n.9. Moreover, even were the claim not waived, we find no support for Christopher's argument that violations of § 25-408 mandate the return of relocated children to Arizona. We further note that although a trial court is charged with the duty of holding violators of the notice requirement accountable, *see Woodworth v. Woodworth*, 202 Ariz. 179, ¶ 30, 42 P.3d 610, 615 (App. 2002), a sanction that

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affects legal-decision-making or parenting time must be made in accordance with the child's best interest, § 25-408(B). Here, the trial court expressly found that "to require the children to return to Arizona at this time may do more harm than good."

Child Support

¶12 In its February 2016 Order, the trial court ruled that Christopher "owes a duty of support to the children, and the current amount of child support shall remain in effect." Christopher contends his child support obligations should be reduced or terminated "in as much as [Isabella] is getting additional child support from the German Government." However, none of Christopher's pleadings related to his petition addressed child support, and because no transcript of the evidentiary hearing is available in the appellate record, we are unable to determine whether this issue was presented to the trial court. As noted above, because we presume the court's findings are supported by the record, *see Baker*, 183 Ariz. at 73, 900 P.2d at 766, and because we will not consider evidence not presented below, *see Harris*, 215 Ariz. 344, ¶ 17, 160 P.3d at 228, we find no error in the court's reaffirmation of the child support award.

Attorney Fees

¶13 Christopher next argues that Isabella should be required to pay his attorney fees "due to her full knowledge of the Arizona Move Law" and her "numerous accounts of perjury to the court." In support, he asserts Isabella "knowingly misle[]d the courts as to ensure that all rulings were in her favor." Again, Christopher's failure to expand upon his argument, provide transcripts on appeal, or provide citations to any support in the record prevents our meaningful review of this claim. *Cf. ARCAP 13(a)(7)(A)*. Accordingly, we find the argument forfeited. Moreover, it directly contradicts the trial court's findings that the relocation was "made in good faith," that "[n]either parent has intentionally misled the Court," and that "[t]here is no credible evidence the mother intended to gain a financial advantage by moving to Germany." To the extent Christopher requests that we

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address the credibility of the witnesses or reweigh the evidence, that is beyond the scope of our appellate review. *See Hurd v. Hurd*, 223 Ariz. 48, ¶ 16, 219 P.3d 258, 262 (App. 2009) (“Our duty on review does not include re-weighing conflicting evidence”); *In re David H.*, 192 Ariz. 459, ¶ 8, 967 P.2d 134, 136 (App. 1998) (“judging the credibility of witnesses and resolving conflicts in testimony are uniquely the province of the trial court”).⁵

Disposition

¶14 Because Christopher has demonstrated no error in the trial court’s ruling, its February 2016 Order is affirmed.

⁵Christopher raises additional claims, but because we are unable to discern in them any legal argument supported by authority or citation to the record, we find those claims waived and do not address them. *See In re Aubuchon*, 233 Ariz. 62, ¶ 6, 309 P.3d 886, 888-89 (2013).